

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

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Service Rules for the 746-764 and 776-794)
MHz Bands, and Revisions to Part 27 of)
the Commission's Rules)

WT Docket No. 99-168

Carriage of the Transmissions of Digital)
Television Broadcast Stations)

CS Docket No. 98-120

Review of the Commission's Rules and)
Policies Affecting the Conversion to)
Digital Television)

MM Docket No. 00-83 ²²⁴

COMMENTS OF
SHOP AT HOME, INC.

Shop At Home, Inc. ("Shop At Home"), hereby submits its comments in response to the Further Notice of Proposed Rule Making, released by the Commission on June 30, 2000 in the above-captioned proceeding, concerning the voluntary relocation of incumbent broadcast licensees from channels 59-69.¹ Shop At Home is the licensee, through wholly-owned subsidiaries, of six television stations including three stations in the Channel 59-69 range: Channel 61, KZJL, Houston, TX; Channel 62, WMFP, Lawrence, MA (serving the Boston market); and Channel 67, WOAC,

¹ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, Memorandum Opinion and Order and Further Notice of Proposed Rule Making, WT Docket No. 99-168, CS Docket No. 98-120 and MM Docket No. 00-83, FCC 00-224 (rel. June 30, 2000) ("FNPRM").

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Canton, OH (serving the Cleveland market). This makes Shop At Home the third largest occupant of 60's spectrum in terms of covered population.

I. BACKGROUND

Shop At Home is a home shopping service that sells products over its Network of six owned and operated television stations and through over 370 cable and television affiliates. Shop At Home was founded in Newport, Tennessee in 1986 and initially sold its products only to consumers using back-yard satellite dishes. In 1993 a group of investors made a major investment in the then financially distressed Shop At Home and brought in new management to grow the Company. Starting with no television stations in 1993, we reinvested the Company's cash flow, borrowed \$95 million and sold \$55 million of equity to build one and acquire five television stations for a total of six stations, making Shop At Home the 15th largest television company in the country in terms of population coverage.

Television shopping networks, including Shop At Home, perform a valuable service to the public by bringing unique, new or hard-to-find products directly to consumers in their homes. These are consumers who might not otherwise be physically capable, or have the time necessary, to leave their homes to acquire the products they want or need. Shop At Home is unique among its three competitive shopping networks with a predominately male audience and substantially differentiated products including specialized sports and other collectibles.

In 1994, Shop At Home acquired an unbuilt construction permit (now licensed as KZJL-TV61 in Houston), and invested considerable resources to construct a state-of-the-art transmission facility. This facility currently provides, in addition to the shopping service, children's programming and programming geared to the interests of Houston's growing Southeast Asia community.

Early in 1995, Shop At Home acquired a financially weak UHF station in Boston (WMFP-TV62) that was on the verge of going dark. We resurrected that station's operations and now provide a viable shopping alternative to the people of Boston and surrounding communities, plus children's programming and locally produced programming geared to a populace that is actively interested in responsible environmental behavior.

In 1998 Shop At Home acquired from the Federal Bankruptcy Courts, three television stations (KCNS-TV38 in San Francisco, WOAC-TV67 in the Cleveland DMA and WRAY-TV30 in the Raleigh-Durham, NC market) that were in serious financial condition and suffered regular outages due to faulty and outdated equipment. The Company made significant investments installing new transmitters, transmission lines and antennas for two of these stations. These stations also serve their local communities with uplifting programming geared to school-aged children and with public affairs programming addressing local issues.

In 1999 Shop At Home added WBPT-TV43 (now WSAH), licensed to Bridgeport, Connecticut, to its owned and operated station group. It also provides locally orientated public affairs and children's programming.

Today these six stations, owned and operated by Shop At Home, are professionally managed and financially viable, providing free over-the-air programming that represents a valuable service to the people and economy of the markets they serve. These six stations cover a population of more than 22 million and the three stations in the 60's cover over 12 million people.

The Company derives sales not only from the Must Carry cable carriage provided to these stations, but also from homes that do not subscribe to a cable service and receive the stations' programming over-the-air. Further, a substantial percentage of Shop At Home's sales are a result of customers viewing secondary over-the-air television sets in cable connected households.

In terms of the Company's total revenues, Shop At Home's owned and operated television stations contribute almost \$60 million annually representing 29% of the entire Company's revenues. While Shop At Home cannot quantify the specific revenues received from these over-the-air homes and the non-cable television sets in cable homes, we believe that almost thirty percent (30%) of our sales over these stations are attributable to over-the-air television viewers. We believe these "over-the-

air” revenues are essential to the profitability of the Company and the continued viability of these stations.

These six television stations and the coverage they provide in both over the air and cable homes are the heart of our Company. They represent our biggest investment and our greatest assets. Shop At Home recognizes the importance to Congress and to the FCC of creating rules that expedite the recovery of the 700 MHz television spectrum, as well as the public interest benefits that will result from the use of that spectrum for new wireless services. While Shop At Home may be willing to accommodate the Commission’s goals by making an expedited move to its digital channels, it is only willing to do so if it has a real opportunity to protect its prior investment in these stations, to recover its anticipated lost future revenues and to recoup the costs that it will incur in an early transition to its digital allotments.

II. THE SECONDARY AUCTION PLAN

The implications of an early switch will have profound financial implications for Shop At Home, its employees, its customers and its shareholders. An early transition from its established analog channels, which have a proven track record, to the unknown world of digital in advance of the market, would put Shop At Home’s investment in these television stations at risk. Therefore, Shop At Home strongly encourages the Commission to establish a private, voluntary, secondary auction to clear the 60’s spectrum. This would give Shop At Home greater certainty in deciding whether to take this step.

Second, any mechanism that provides for early departure by a licensee from its spectrum must be voluntary and market-oriented. This will allow wireless companies and the incumbent licensees to value the licensee's early departure from its spectrum, thus increasing the chances that the licensee will be able to capture the fair value. Furthermore, Shop At Home supports the FCC's adopting a three-way voluntary agreements system as one of the band-clearing mechanisms. Such a system would open up participation in the band-clearing process to all licensees, not only to the incumbent licensees, an action Shop At Home believes would further hasten the transition.

Shop At Home believes that, given the time frames involved, only a private party could organize and establish a secondary auction process through voluntary negotiation that could protect the interests of the current occupants of the 60's spectrum and the needs of the bidders for that spectrum. Shop At Home fully supports the filing by the Spectrum Exchange Group, LLC and recommends that the FCC adopt their suggestions concerning the secondary auction. Shop At Home believes that Spectrum Exchange's experience in the broadcasting, media, telecommunications and financial industries makes them uniquely qualified to establish and implement this secondary auction.

In fact, without the FCC's support of Spectrum Exchange's proposal, Shop At Home fears that the smaller owners of 60's spectrums will not be able to individually negotiate effectively with the bidders and that the Spectrum Auction's secondary auction

proposal is the only way these smaller owners will be able to recoup their investments, and therefore this approach is the only way smaller owners are likely to agree to clear the spectrum early.

III. DIGITAL MUST CARRY

Additionally, any band-clearing process must be given full digital mandatory carriage rights. Given the low penetration rate for digital receivers, without must carry rights, vacating stations would lose service to almost every viewer who does not subscribe to cable services—nearly 30% of all households nationwide. Clearly, an early transition to digital service might result in significant economic and competitive costs to those stations making the move. Shop At Home applauds the agency for recognizing this risk and mandating that “[e]xisting analog stations that return their analog spectrum allocation and convert to digital are entitled to mandatory carriage for their digital signals”² To offset this substantial risk, however, the Commission must do more. Shop At Home urges the agency to adopt must carry for the full 6 MHz stream in its pending proceeding considering the scope of digital must carry.³ Full digital must carry for each multicast channel would lessen the deleterious impact caused by a 30% audience loss and would provide a meaningful incentive for broadcasters to clear the band.

² Carriage of the Transmissions of Digital Television Broadcast Stations, CS Docket No. 98-120, Notice of Proposed Rulemaking, 13 FCC Rcd 15092 (1998).

³ FNPRM, FCC 00-224 at ¶65.

Even with full digital must-carry incumbent broadcasters face a substantial risk in vacating their spectrum and beginning early digital-only service.

IV. GRANT OF DIGITAL LICENSEES

The FCC should expedite processing of the DTV construction permit applications filed by the incumbent licensees. In November 1999, Shop At Home filed six DTV construction permit applications, including applications for new digital channel assignments to replace our Channels in the 59-69 band. None of these applications have been granted in the past ten months. Despite the FCC's desire for a speedy move from the 700MHz spectrum, and even if Shop At Home was willing to accommodate the agency by vacating the spectrum early, it would be prevented from doing so because the Commission itself has yet not granted it the requisite authority to construct its new digital facilities.

V. NO FURTHER DELAY

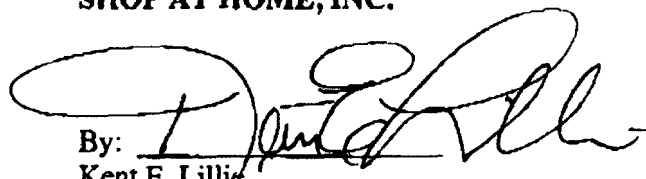
Finally, under pressure from the wireless industry, the FCC has delayed the primary auction three times to permit additional time for bidder preparation. Such delays ultimately serve no other purpose than to delay the introduction and innovation of broadband wireless services. A timely 700 MHz auction will realize important public interest benefits by helping bring new and powerful wireless services to the market sooner. Additionally, such delays postpone the benefits of the funds that should be available to the government.

By granting full digital must carry for the entire 6MHz channel, coupled with a detailed, voluntary, market-based band-clearing mechanism, the Commission will advance its goal of expediting the move by Channel 59-69 incumbents to their digital allotments, without imposing undue financial losses on these incumbents. Moreover, under the circumstances mentioned above, should the agency adopt an approach that allows for three-way voluntary transition agreements, in addition to considering an early move from its Channels 59-69, Shop At Home would consider assisting the FCC in the band-clearing process by entering into three-way agreements involving its lower-band channels in San Francisco, Raleigh and Bridgeport.

Accordingly, Shop At Home urges the Commission to adopt only market-based, voluntary band-clearing mechanisms, preferably the Spectrum Exchange proposal, in order to ensure that incumbent licensees who have spent considerable sums to develop that spectrum have the chance to recover the fair value of their investment, while encouraging an expedited recovery of the Channel 59-69 spectrum.

Respectfully submitted,

SHOP AT HOME, INC.



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